

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 11 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSE JUAN PEREZ-DURAN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-73002

Agency No. A73-858-343

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 1, 2008^{**}

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Jose Juan Perez-Duran, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for lawful permanent

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

resident cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law and claims of due process violations, *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003), and deny the petition for review.

The agency correctly determined that Perez-Duran was statutorily ineligible for lawful permanent resident cancellation of removal because he was served with the Notice to Appear less than the seven years from his date of admission. *See* 8 U.S.C. §§ 1229b(a)(2), (d)(1)(A).

Perez-Duran contends that the IJ denied his due process rights by denying him an opportunity to present the circumstances of his guilty plea in response to the government's motion to pretermite and by failing to look beyond the criminal conviction documents to determine his guilt or innocence. Perez-Duran's first contention is not supported by the record because the IJ afforded him the opportunity to be heard on the government's motion, and counsel declined. Perez-Duran's second contention is foreclosed by *Tokatly v. Ashcroft*, 371 F.3d 613, 623 (9th Cir. 2004) (IJs may not go beyond the conviction documents "to examine the facts behind the conviction") (internal quotation marks and citation omitted).

PETITION FOR REVIEW DENIED.